

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1130 OF 2006

Ursula Rosemary D'Souza & Anr. ...Petitioners.
Versus
The Brihan Mumbai Mahanagar
Palika & Ors. ...Respondents.

.....
Mr.C.Martis, Advocate for the Petitioners.
Ms.A.K.Savla, Advocate for R.1 & 2.
Mr.S.T.Menon, Advocate for R.3.
Mr.R.D.Meldo, Advocate for R.4 & 5.
Ms.Z.Calcuttawala, Advocate for R.6.
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CORAM : F.I.REBELLO AND
SMT.V.K.TAHILRAMANI, JJ.

DATE OF RESERVING
THE ORDER : JULY 12, 2006.

DATE OF PRONOUNCING
THE ORDER : JULY 17, 2006.

ORAL ORDER (PER SMT.V.K.TAHILRAMANI, J.)

1. This Petition, filed under Article 226 of the Constitution of India, seeks for a mandamus against the Municipal Commissioner, B.M.C. (Respondent No.2) to initiate appropriate action against Respondent No.3 by disqualifying him from being a Councillor and representing Ward No.75.

2. The Petitioners claim to be the joint owners of plot bearing City Survey No.F/262 of Bandra Division, Taluka-Andheri admeasuring 117 square meters, and bungalow structure admeasuring

about 2000 square feet bearing Municipal No.HW Ward No.5144 at 93-D Old Khar, 33rd Road, Khar, Mumbai-400 052. The petitioner had filed L.C. Suit No.5639 of 2002 against Respondent Nos.4 & 5 for restricting Respondent No.1 from granting permission for repairs. The petitioners allege that during the pendency of the said suit, Respondent Nos.4 & 5 demolished the bungalow and reconstructed it without permission of the Respondent No.1. Consequently, Respondent No.1 served a show cause notice No.HW/BF/III/351/848/05 dated 30.06.2005 on Respondent Nos.4 & 5. The Petitioner further states that on 5.10.2005, she learnt that Respondent No.3 was interfering and putting pressure on the officials of Respondent No.2 from enforcing the said show cause notice and from demolishing illegal structure.

3. The demolition of unauthorised structure has been approved by the Assistant Engineer of Respondent No.2 on 30.1.2006, and on the same day the Respondent No.3 addressed a letter to the Deputy Municipal Commissioner. As per the Petitioner, this letter amounts to interference in the demolition of illegal structure within the meaning of Section 16(1D) of the B.M.C.Act. On

3.2.2006, the Petitioner has issued a legal notice to Respondent No.2 seeking the dismissal of Respondent No.3 as Municipal Councillor, under the above mentioned Section 16(1D) of the B.M.C.Act.

4. Having heard the learned Counsel for the Petitioners and the Respondents, considering the letter addressed by the Respondent No.3 we are of the view that it is for the Respondent No.2 to consider the representation of the petitioner and decide the same on its own merits and as per law after hearing all the parties concerned.

5. We, therefore, dispose of this Petition with a direction to Respondent No.2 to decide the Petitioner's representation dated 3.2.2006 or if the Respondent No.2 can delegate his powers, than the delegatee to dispose of the said representation. The said representation to be disposed of within four weeks from today in accordance with law.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI, J.]